



**ROUSE HENDRICKS
GERMAN MAY
PC**

May 7, 2014

VIA ECF

Honorable Vernon S. Broderick
United States District Judge
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 415
New York, NY 10007

Re: *Whitley, et al v. JP Morgan Chase & Co., et al*, Case No. 1:12-cv-02548-VSB:
Opposition to Motion for Leave to File Single Reply Brief With Excess Pages

Dear Judge Broderick:

We represent Plaintiffs in the *Evans* and *Stolwyk* cases that have been designated as “Related Actions” to the above-captioned case. We are writing to oppose Defendants’ request for leave to file a single reply brief with excess pages.

First, a brief explanation as to the timing of this filing. As Defendants explained, Plaintiffs in the three “Related Actions” to the above-captioned case filed three separate opposition briefs (Docs. 134, 135, 136) to Defendants Motion to Consolidate (Doc. 131). On Saturday afternoon, May 3, counsel for Defendants requested to file a single reply not to exceed twenty pages. (Doc. 137-1.) We responded and explained that the issues in the three separate opposition briefs were sufficiently distinct and should be dealt with separately. *Id.* On Monday afternoon, May 5, counsel for Defendants indicated that he wished to request a telephonic conference with the Court to address the issues. *Id.* We responded and indicated we would be available for such a conference. *Id.*

It is unclear whether counsel for Defendants requested a telephonic conference. Sometime on Tuesday, May 6, Defendants filed their letter motion (Doc. 137). The letter motion states that counsel for *Evans* and *Stolwyk* were copied on the letter, but we did not receive a copy at the time of filing because we do not represent a party in *Whitley*. After close-of-business on Tuesday, May 6, Defendants did in fact serve their letter motion by e-mail on counsel for *Evans* and *Stolwyk*, also stating “Please take also notice that the court granted Defendants’ motion and I have attached the docket entry order notification for your records.” Exhibit A. When the undersigned questioned why we were receiving notice of a motion after it had already been granted, counsel for Defendants responded that he would “consent to your filing [an opposition] after the fact.” Exhibit B.

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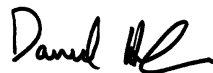
Substantively, this Court should deny Defendants' request, as it would be appropriate only if the cases were already consolidated. As detailed in our consolidation briefing, *Evans* and *Stolwyk* are different cases from *Whitley* and *Knee*, and there will be no "one-size-fits-all" arguments that appropriately support consolidation of all of these cases. As an example, *Evans* differs from *Whitley* in type of action (individual vs. class); scope (members of a single retirement plan in SAIF vs. many plans' members in separate accounts and/or SAIF); products at issue (SAIF vs. separate accounts); time period (2009-12 vs. 2007-10); and so forth. *Stolwyk* differs from *Whitley* for the same reasons except for the type of action, and indeed *Stolwyk* differs even from *Evans* in the type of action advanced.

Counsel for *Evans* and *Stolwyk* filed separate opposition briefs because *Evans* dealt with the propriety of joining an individual action with distinctive class actions, and *Stolwyk* dealt with different issues of consolidating distinctive class actions. Defendants' single reply brief – the final word on their Motion to Consolidate – will necessarily seek to conflate the unique and separate issues presented by these cases. Simply put, the issues raised by the separate opposition briefs are most appropriately addressed by separate reply briefs within the page limitations.

For these reasons, counsel for *Evans* and *Stolwyk* respectfully request that Defendants' request for leave to file a single reply brief that will not exceed twelve pages be denied.

Very truly yours,

ROUSE HENDRICKS
GERMAN MAY PC

A handwritten signature in black ink, appearing to read "Daniel Hodes", with a stylized flourish at the end.

By
Daniel B. Hodes